

MARGARET M. SHALLEY, ESQ.

MARGARET M. SHALLEY & ASSOCIATES, LLC

225 Broadway, Suite 715

New York, NY 10007

917-841-0231 (Phone)

212-566-8165 (Fax)

margaretshalley@aol.com

July 29, 2021

VIA ECF & EMAIL

The Honorable Kenneth M. Karas
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

MEMO ENDORSED

**Re: *U.S. v. Jonathan Delaura*
 12 Cr. 812 (KMK)**

Dear Judge Karas:

I was assigned by the Court on June 1, 2021, as independent counsel to advise Mr. Delaura of the ramifications if the Court granted his § 2255 petition on consent. As such, I have reviewed the following documents: the minutes of the May 26, 2021, conference; the July 6, 2021, motion to recuse the Court and the Government; the Government's July 29, 2021, response; the plea minutes from the December 12, 2012, plea to state court indictment S284/2012; the initial complaint and information in this case; the plea agreement; the Government's sentencing memorandum dated March 27, 2014; the defense sentencing memorandum and Exhibit A, the adult sexual offense risk evaluation; the Government's letter to the Court dated January 15, 2021; as well as the applicable statutes including 18 U.S.C. § 2422, Coercion and Enticement; and 18 U.S.C. § 2251, Sexual Exploitation of Children. I have also spoken to Mr. Freifeld and the Government on a number of occasions and met with Mr. Delaura on July 21, 2021, concerning the options available to him. I suggested to Mr. Delaura that, in order to adequately advise him concerning whether or not he should proceed with the § 2255 to have his plea vacated, that I need to know the strength of the Government's case and the evidence that is in the Government's possession supporting the charges.

My understanding from reviewing the minutes from the May 26, 2021, conference, is that apparently, the Rule 16 discovery was produced in an "open" fashion, in that when Mr. Greenwalt, Mr. Delaura's prior attorney, wanted to review discovery, he received the documents he wanted but that no actual Rule 16 production was made.¹ See 05/26/2021Tr. at 94:17-20. In order to determine what I believe is in the client's best interest concerning his options and the possible

¹ Additionally, it is my understanding that most of the discovery was produced as part of Mr. Delaura's state proceeding so Mr. Delaura's prior counsel had access to it but I do not.

viability of additional charges, a discovery production should be made by the Government for counsel to review in order to assess the evidence and be in a position to advise the defendant so that he can make a knowing and intelligent decision concerning whether he should proceed with his § 2255 motion. *See* 05/26/2021 Tr. at 95: 5-18.

Accordingly, it is respectfully requested that the Court stay any decision regarding Mr. Delaura's § 2255 petition until the Government provides the Rule 16 discovery related to the four counts the defendant pled guilty to and any additional information that the Government mentioned at the conference or that the Government referenced in their sentencing letter dated March 27, 2014, for counsel to review in order to properly advise the defendant. Mr. Freifeld is in agreement with holding the decision on the § 2255 petition in abeyance pending my review of the discovery materials. AUSA Cohen asks that I advise the Court that she will be out of the state from August 2, 2021, through August 9, 2021, in case the Court wishes to hold a conference.

The Court's time and attention to this matter is greatly appreciated.


Respectfully submitted,

/s/

Margaret M. Shalley

cc: AUSA Marcia Cohen
Andrew Freifeld
(via ECF & email)

Granted. The Court will reserve on Mr. Delaura's § 2255 Petition until the Government has produced—and Ms. Shalley has reviewed—the Rule 16 discovery and other relevant information referenced above. No conference is necessary. Ms. Shalley shall provide the Court with a status update in 30 days.

SO ORDERED 
KENNETH M. KARAS U.S.D.J.

July 29, 2021